

**IN THE FIRST CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

INNOVATION VENTURES, LLC, )  
38955 Hills Tech Drive )  
Farmington Hills, Michigan 48331 )  
)  
LIVING ESSENTIALS, LLC )  
38955 Hills Tech Drive )  
Farmington Hills, Michigan 48331 )  
)  
and )  
)  
MICRODOSE SALES, LLC )  
26600 Haggerty Road )  
Farmington Hills, Michigan 48331, )  
)  
Plaintiffs, )  
)  
v. )  
)  
TENNESSEE DEPARTMENT OF )  
COMMERCE AND INSURANCE, *ex rel.*)  
ATTORNEY GENERAL AND )  
REPORTER, ROBERT E. COOPER, JR.)  
)  
Defendant. )

Case No. 13-858-I

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**STATE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Comes now the State of Tennessee, *ex rel.* Robert E. Cooper, the Attorney General and Reporter, at the request of the Division of Consumer Affairs within the Department of Commerce and Insurance, and files this Memorandum in Support of its Motion to Dismiss the Plaintiffs' (hereinafter "5-hour Energy") Complaint for a declaratory judgment, injunctive relief, and a protective order under Tenn. R. Civ. P. 12.02(6).

## I. SUMMARY

5-hour Energy's Complaint seeks a declaratory judgment, protective order, and injunction to suppress the production of documents that *it voluntarily produced and previously provided in unredacted form* to a third-party advertising investigative agency as relevant support for its ubiquitous "no crash" tagline—one of the subject areas of the State's investigation.

5-hour Energy's Complaint should be dismissed because it is a time-barred collateral attack on a valid pre-filing investigative subpoena, fails to identify a real and justiciable controversy, seeks protection from documents and information that are already protected from public disclosure under Tennessee's public records statute, seeks relief that is counter to the legislative intent set forth Tenn. Code Ann. § 47-18-106(g), and, standing issues aside, seeks to quash a long-issued investigative subpoena that not only meets the less burdensome showing for investigative discovery, but, by 5-hour Energy's own tacit admission, seeks documents that are relevant to the State's investigation.

In its Complaint, 5-hour Energy advances three main arguments, namely that (1) disclosure of the unredacted documents to the State will put its formula at risk for public disclosure under Tennessee's public record statute, (2) disclosure to the State will put the formula at risk for public disclosure in other states, and (3) the information is not relevant to the State's investigation and would harm 5-hour Energy immensely if disclosed. Each is without merit.

First, in spite of 5-hour Energy's unfounded assertions to the contrary, because the documentary material and information is sought through the State's investigative subpoena under the Tennessee Consumer Protection Act, it is protected from disclosure under Tennessee's public records statutes *regardless* of whether it is designated a trade secret or not.

Second, while the State is authorized *by statute* to share information with the larger multistate group, 5-hour Energy retains the ability to protect itself if information is shared and a public records request is made to another state through the advanced notice provision contained in the confidentiality agreement to which all states in the multistate group *and 5-hour Energy consented*. Through its action, 5-hour Energy is essentially arguing that the sharing mechanism authorized in the confidentiality agreement *that it negotiated, which specifically includes trade secrets*, is now insufficient.

Third, 5-hour Energy does not have standing to assert a relevancy objection to the State's subpoena as its request to modify or set aside the State's pre-filing subpoena had to have been brought within ten days of notice of the subpoena, which did not occur.<sup>1</sup> Even if one were to reach the merits of the "relevancy" objection, 5-hour Energy is essentially arguing that information that it submitted as relevant for a comparable substantiation inquiry brought by the National Advertising Division of the Council of Better Business Bureaus ("NAD") is now irrelevant when the State seeks the same information 5-hour Energy *voluntarily* produced and previously provided to NAD.

The State recognizes the sensitivity of the underlying documents requested and will take steps to limit access to the document, should they be required to be produced, consistent with state law and the confidentiality agreement to which the parties consented.

## **II. STATEMENT OF FACTS**

1. 5-hour Energy is a two ounce caffeine-concentrated "energy shot" that also contains other ingredients including tyrosine and phenylalanine. It is sold individually at many

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<sup>1</sup> Tenn. Code Ann. § 47-18-106(b) (requiring petition to modify or set aside to be brought within return date specified in the State's request or 10 days, *whichever is shorter*.)

retail stores, but also sold in bulk, including in 24-pack increments. Aside from the original product, which comes in different flavors, 5-hour Energy also markets an “extra strength” and “decaffeinated” version.

2. Throughout its existence, 5-hour Energy has advertised heavily online, in print, and through television advertisements, including those directed at young demographic groups.<sup>2</sup>

3. In 2007 as part of a response to an advertising challenge before the NAD, 5-hour Energy provided an *unredacted* cover letter and a scientific literature review to the NAD that referenced the amounts of specific ingredients related to the 5-hour Energy products. 5-hour Energy produced the documents in support of its position that 5-hour Energy’s had substantiation for its “hours of energy now, no crash later” (hereinafter “no crash”) product tagline.

4. Following the inquiry, the NAD recommended that the “no crash” claim be discontinued because, *the NAD maintained*, 5-hour Energy’s own evidence indicated that there was a crash from the product.

5. The State of Tennessee initiated an investigation of 5-hour Energy under the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.* to determine whether 5-hour Energy has engaged in or is currently engaging in unfair and/or deceptive commercial acts or practices. The investigation has focused on three subject areas, namely (1) whether 5-hour Energy’s highly-publicized “doctors’ recommend” advertising campaign, which was launched following questions about 5-hour Energy’s safety, was deceptive, (2) whether 5-hour Energy’s ubiquitous “no crash” product tagline was deceptive, and (3) whether 5-hour Energy’s claim of product suitability for adolescents was deceptive.

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<sup>2</sup> See, e.g., <http://www.youtube.com/watch?v=nEwXgixbmAQ> (humorous television ad “Parachute Man” featuring young-looking man explaining all of the things he did after taking 5-hour Energy).

6. On January 23, 2013, the State of Tennessee through its Attorney General, at the request of the Director of the Division of Consumer Affairs, issued and served a Request for Consumer Protection Information (“RCPI”), a pre-filing investigative subpoena under the Tennessee Consumer Protection Act , to 5-hour Energy.

7. The RCPI issued and served on January 23, 2013, contained Request #31, which states:

Provide all correspondence between You and the National Advertising Division of the Council of Better Business Bureaus that refer or relate to a “crash” following use of 5-hour ENERGY.

8. 5-hour Energy did not move for a protective order or otherwise seek to modify or set aside the State’s RCPI within ten days.

9. On February 26, 2013, 5-hour Energy and the Multistate Executive Committee executed a confidentiality agreement that among other things expressly included a provision requiring advanced notice of the disclosure of any material designated by 5-hour Energy as “confidential,” including trade secrets.

10. Instead of providing the same unredacted documents to the State Attorney General that the company previously provided to the NAD, 5-hour Energy provided edited versions that redacted the amounts of specific ingredients related to the 5-hour Energy products.

11. After discussions with 5-hour Energy about the production of unredacted copies of the documents proved unsuccessful, the State, pursuant to Tenn. Code Ann. § 47-18-106(c) provided notice to 5-hour Energy’s national counsel that it intended to petition a court to compel production.

12. Then, 5-hour Energy filed its declaratory judgment action on June 13, 2013, without any notice to the State.

### III. LEGAL STANDARD

A motion to dismiss tests the legal sufficiency of the claim, not the strength of the plaintiff's proof, and the court should construe all facts in favor of the plaintiff, taking the relevant and material allegations as true. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). "A trial court should grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts which would entitle him to relief." *State ex rel. Moncier v. Jones*, No. M2012-01429-COA-R3-CV, 2013 WL 2492648, at \*2 (Tenn. Ct. App. June 6, 2013). As shown below, no set of facts entitles 5-hour Energy to the relief it seeks.

### IV. ARGUMENT

#### A. 5-Hour Energy's Complaint Is A Time-Barred Collateral Attack on the State's Investigative Subpoena.

Under the state enforcement provision of the TCPA, subpoenaed entities are required to bring all objections to pre-filing investigative subpoenas quickly, so as not to delay the investigation. Under this provision, entities, such as 5-hour Energy, that receive a pre-filing subpoena have to move a court *within ten days of notice* of the subpoena for a protective order, or to modify or set aside the subpoena if the return date for production is more than ten days. Tenn. Code Ann. § 47-18-106(b).

Here, 5-hour Energy made no filing within ten days after receiving notice of the investigative subpoena, which had a return date longer than ten days. 5-hour Energy was served with the State's pre-filing subpoena on January 23, 2013, and filed its action on June 13, 2013—*141 days later*. While 5-hour Energy asserts that it is not trying to modify or set aside the State's pre-filing subpoena through the instant action *that is exactly the relief that 5-hour Energy seeks*.

In its original subpoena 5-hour Energy was called upon to produce “all correspondence between [it] and the National Advertising Division of the Council of Better Business Bureaus that refer or relate to a ‘crash’ following use of 5-hour ENERGY.” Through its action, 5-hour Energy seeks court permission for a protective order and to modify or set aside the State’s request to produce correspondence between it and the NAD that refer or relate to a ‘crash’ following use of 5-hour ENERGY. By statute, 5-hour Energy is time-barred from doing so.

Moreover, 5-hour Energy cannot circumvent the ten-day window through Rule 57, the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, or through equitable relief. These grounds are barred because Tenn. Code Ann. § 47-18-106(b) provides the *exclusive* statutory mechanism for modifying an investigative subpoena under the TCPA. As a matter of common sense, Tenn. Code Ann. § 47-18-106(b) has to be exclusive because it sets a time limit within which an investigative target can seek to move for a protective order or modify the State’s pre-filing subpoena. Otherwise, the ten day period with which to raise objections would have no meaning.

This conclusion is supported by case law. “Subject to some exceptions, a declaratory judgment action should not be considered where special statutory proceedings provide an adequate remedy.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008) (citing *Katzenbach v. McClung*, 379 U.S. 294, 296 (1964)). This is true in spite of Rule 57’s language stating, “[t]he existence of another adequate remedy does not necessarily preclude a judgment for declaratory relief in cases where it is appropriate.” See *Katzenbach v. McClung*, 379 U.S. 294, 295-96 (1964). The exceptions identified in *Katzenbach*, namely the existence of a parallel constitutional question in a companion case and the need to announce the constitutionality of the operative statute as soon as possible, are not present here. Here, the TCPA provides

investigative targets with a special statutory proceeding that provides an adequate remedy to move for a protective order or to modify or set aside the investigative subpoena. In spite of having the documents at the time of notice, 5-hour Energy simply chose not to bring such a special statutory proceeding within the allotted time. Therefore, 5-hour Energy's declaratory judgment action should not be considered.

**B. 5-Hour Energy's Complaint Fails to Identify a Real and Justiciable Controversy.**

The chief purpose of a declaratory judgment is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations . . . ." Tenn. Code Ann. § 29-14-113. "[C]ourts should act with *utmost caution* when exercising the discretion to make a declaration."<sup>3</sup> Declaratory judgments are subject to limitations. *Johnson City v. Caplan*, 253 S.W.2d 725, 726 (Tenn. 1952). A justiciable controversy must exist in order to maintain an action for a declaratory judgment. *Jared v. Fitzgerald*, 195 S.W.2d 1, 4 (Tenn. 1946).

**1. The Scenarios That 5-Hour Energy Seeks Relief From Are Not Justiciable Because They Are Hypothetical or Theoretical.**

To be justiciable, the controversy must involve a real question rather than a theoretical one and a legally protectable interest must be at stake. *Cummings v. Beeler*, 223 S.W.2d 913, 915 (Tenn. 1949). If the controversy depends upon a future or contingent event, or involves a theoretical or hypothetical state of facts, the controversy is not justiciable. *Story v. Walker*, 404 S.W.2d 803, 804 (Tenn. 1966).

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<sup>3</sup> *State ex rel. Moncier v. Jones*, No. M2012-01429-COA-R3-CV, 2013 WL 2492648, at \*2 (Tenn. Ct. App. June 6, 2013) (citing *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948, 954 (Tenn. 1998) (emphasis added)).



Here, 5-hour Energy seeks declarations on issues that are theoretical or hypothetical. *5-hour Energy seeks protection for documents that it has not produced to the State from public records requests that have not occurred.* The controversy 5-hour Energy asserts is therefore not justiciable.

**2. The Documents Requested Are Not Subject to Disclosure under Tennessee's Public Records Law.**

In its Complaint, 5-hour Energy asserts that the documents it unilaterally redacted containing its product formula would be subject to public records requests from members of the public, including competitors, if the documents were produced to the State. This argument is wholly without merit. Putting aside the hypothetical nature of the scenario from which 5-hour Energy seeks relief, the documents are not subject to disclosure under Tennessee's public records law even in the face of an actual request.

Records that are confidential or privileged under state law in the possession of the Attorney General, which relate to any pending or contemplated legal proceeding by the Attorney General, are not open for public inspection. Tenn. Code Ann. § 10-7-504(a)(5)(A)(i). If produced in unredacted form, the documents relate to a contemplated legal proceeding by the Attorney General and would be confidential or privileged under the TCPA.

The documents were produced pursuant to a valid pre-filing subpoena under the TCPA and are subject to Tenn. Code Ann. § 47-18-106(g), which states:

*No documentary material, merchandise, or other information, including trade secrets, obtained pursuant to a [TCPA investigative subpoena], unless otherwise ordered by the court for good cause shown, shall be produced for inspection, copied by, or its contents disclosed to, any person other than an authorized representative of the division or other proper law enforcement official for the purpose of prosecution without the consent of the person who produced the material or information . . . (emphasis added).*

In anticipation of this objection, 5-hour Energy attempts to argue that the non-disclosure provision contained in Tenn. Code Ann. § 47-18-106(g) does not provide protection because “[5-hour Energy] has no assurance that the Attorney General would agree that the formula-related information is a trade secret or that it is exempt from disclosure under the Tennessee Public Records Law.” Compl. at ¶ 22. This is counter to the express language of Tenn. Code Ann. § 47-18-106(g), which applies to *any documentary material or other information* obtained pursuant to an investigative subpoena under the TCPA. As such, regardless of whether the State stipulates that it is a trade secret or not, it is documentary material or information subject to this provision.

**3. The Confidentiality Agreement 5-hour Energy Consented to and Negotiated Already Provides for an Advance Notice Mechanism for 5-hour Energy’s Protection and Authorizes Inter-Agency Sharing.**

In its Complaint, 5-hour Energy asserts that the documents, if shared by the State with law enforcement agencies in other states, would subject its most valuable trade secret to disclosure under other public records laws.

At the outset, under the TCPA, the State is expressly authorized to share documentary material and information, including trade secrets, to “other proper law enforcement official[s] for purposes of prosecution.” Tenn. Code Ann. § 47-18-106(g). The other members of the 5-hour Energy multistate, which enforce their respective state’s consumer protection laws, surely qualify under this provision.

Perhaps more importantly, 5-hour Energy and all 33 states in the 5-hour Energy multistate negotiated and consented to a confidentiality agreement, attached as Exhibit 1 to the State’s Motion. The confidentiality agreement does not allow for unilateral redaction by 5-hour Energy and instead requires any state signatory to provide 5-hour Energy advanced notice of any public records request concerning confidential information, which includes trade secrets.

Notably, 5-hour Energy consented to a provision in the Confidentiality Agreement that states:

4. The Attorneys General may disclose Confidential Information to:

(b) any state or federal agency empowered to investigate matters or prosecute laws regulations or rules which the Attorney General determines may be implicated by documents or information revealed during the Investigation, provided that such state or federal agency agrees in writing to abide by the terms of this agreement to the extent permitted by law.

In other words, 5-hour Energy now says that the sharing mechanism of confidential information, including trade secrets, between law enforcement agencies, which it expressly consented to, is now insufficient. Notably, 5-hour Energy has not identified a single state in the multistate group where it asserts the risk of disclosure is high. But even if it did, 5-hour Energy would be entitled to advanced notice under the confidentiality agreement to move for a protective order, which the instant action and the parallel declaratory judgment actions filed in the executive committee states of Oregon, Maryland, and Vermont, demonstrate 5-hour Energy is fully capable of doing.

**C. Standing and Standard Issues Aside, the Information Is Highly Relevant to the State's Investigation**

In its Complaint, 5-hour Energy asserts that the formula is not relevant to the State's investigation. First, as mentioned above, 5-hour Energy does not have standing to assert this relevancy objection because it did not do so within ten days of service of the investigative subpoena. *See* Tenn. Code Ann. § 47-18-106(b). Second, at the investigative stage, the standard for obtaining discoverable documents and information is much less rigorous.

A party under investigation may not contest the discovery and protection of evidence in the same manner he may contest use of that evidence in an adjudication by proper objection, by the introduction of other evidence, and the other safeguards traditional to an adversary proceeding under our system. An investigation does not determine guilt or innocence; that is done at the

adjudication, and thus it is there the whole plethora of due process rights designed to insure the fairness of such a determination come to bear.

*State ex rel. Shriver v. Leech*, 612 S.W.2d 454, 458 (Tenn. 1981).

Third, even if one to reach the merits of the relevancy objection, the unredacted documents are directly relevant to the three subject areas of the State's deception investigation, namely the "no crash" tagline, the doctors' recommend campaign, and the express representation of suitability for adolescents.

The documents were originally submitted in unredacted form to the NAD by 5-hour Energy to support its contention that its ubiquitous "no crash" tagline was substantiated. In essence, 5-hour Energy takes the absurd position that the information it sought relevant to defend itself to the NAD on the same question the State now asks is now irrelevant when the State seeks it.

Moreover, 5-hour Energy cannot assert that the specific product formulation is somehow superfluous to the question of substantiation for the "no crash" claim because the central premise of the position piece is that 5-hour Energy is different from its competitors because of the different ingredients contained in its formulation and the formulation itself. The amounts of the ingredients matter to this inquiry.

5-hour Energy also cannot assert that because an approximate value of the caffeine amount of its original 5-hour Energy product<sup>4</sup> has been disclosed by 5-hour Energy that the exact amounts of the other components of 5-hour Energy's product formulation are irrelevant. 5-hour Energy's own founder, Manoj Bhargava has insisted that the purported beneficial effects of 5-hour Energy are the result of the other ingredients—*not caffeine*.

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<sup>4</sup> 5-hour Energy has not disclosed the caffeine content of its "extra strength," or "decaffeinated" product lines.

Here is an excerpt from an interview with Mr. Bhargava:

**NDTV:** So what's in it without divulging trade secrets?

**Manoj Bhargava:** No, actually it's right on the label. It's basically nutrients that make you focus.

**NDTV:** And you've said "it's not an energy drink, it's a focus drink", right? So what is it? Because you did arrive in a market where Red Bull for example already existed. So you know everybody's notions back then of an energy drink. So how did you think that this would be different?

**Manoj Bhargava:** Well look I found it at one place.

**NDTV:** At a natural products fair?

**Manoj Bhargava:** Yeah and I thought "Wow, this is amazing". So I could sell this and so I figured it out. Basically what it has in it is brain nutrients, for brain health. So there is caffeine in it, *but the purpose of caffeine is to get everything else absorbed. Most of the people don't know that one of the great qualities of caffeine is it allows you to absorb nutrients and it does it quickly, and so when it does it quickly, you focus and when you focus you think you have energy.*<sup>5</sup>

In addition, the specific ingredient amounts are also relevant to the other two chief inquiries of the State's deception investigation: the doctors' recommend advertising campaign and the claim of product suitability for adolescents.

These two claims are, in part, express and implied safety claims about the product. As shown in Exhibit 2 to the State's Motion to Dismiss, 5-hour Energy represented that the amounts of the other components of 5-hour Energy, including tyrosine and phenylalanine, were safe in

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<sup>5</sup> Full Transcript: In conversation with Manoj Bhargava, NDTV.COM, <http://www.ndtv.com/article/india/full-transcript-in-conversation-with-manoj-bhargava-196198> (last visited July 6, 2013). See also, Michelle Castillo, *FDA Investigating 13 Deaths Tied to 5-hour Energy*, CBS NEWS, available at [www.cbsnews.com/8301-204\\_162-57550247/fda-investigating-13-deaths-tied-to-5-hour-energy/](http://www.cbsnews.com/8301-204_162-57550247/fda-investigating-13-deaths-tied-to-5-hour-energy/) (last visited July 9, 2013) (Video features following dialogue: CBS NEWS: "What's in 5-hour Energy? What are the ingredients?" MR. BHARGAVA: "I don't remember all of them, but certainly amino acids are the main ingredients and there is some caffeine.") Even if this were true it raises efficacy questions about its decaffeinated product line.

materials prepared by 5-hour Energy for doctors to review in responding to 5-hour Energy's survey as to whether they would recommend the product.<sup>6</sup> 5-hour Energy's label represents that the product is safe for those over the age of 12.<sup>7</sup>

While the State is in the midst of an investigation and seeks the information to make an informed enforcement decision, the safety of 5-hour Energy's products, which are directly related to the type and amount of ingredients used, appear *far* from established. According to commentators, the health effects of the ingredients, including tyrosine and phenylalanine, when combined with caffeine are not known.<sup>8</sup>

Tyrosine, in particular, may be associated with a severe increase in blood pressure in people taking certain antidepressant medications, which can lead to a heart attack or a stroke, may cause unsafe levels of a thyroid hormone in people with hyperthyroidism or Graves disease, may cause migraine headaches, or may cause upset stomachs.<sup>9</sup>

More importantly, 5-hour Energy has been the subject of 92 adverse incident reports from the Center for Food Safety Adverse Event Reporting System (CAERS), a post-market surveillance database collected by the U.S. Food and Drug Administration about events or problems that are allegedly related to specific products. *See* Exhibit 3 to State's Mot. Eleven of the adverse events that were reported involved fatalities while many others involved serious medical conditions such as heart attacks, chest pains, increased heart rate, heart arrhythmia, and

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<sup>6</sup> "The amounts of the ingredients are under the Upper Limits established by the Food Nutrition Board of the National Academy of Sciences-National Research Council for each ingredient." Ex. 2 to State's Mot. to Dismiss.

<sup>7</sup> Curiously though, 5-hour Energy has stated elsewhere, albeit inconspicuously, that "5-hour ENERGY is intended and formulated for hard working *adults*." *See* Ex. 2 to State's Mot.

<sup>8</sup> Melanie Haiken, *Can Energy Drinks Kill, Reprise? New FDA Investigation This Time Names 5-Hour Energy*, FORBES, available at <http://www.forbes.com/sites/melaniehaiken/2012/11/15/can-energy-drinks-kill-reprise-new-fda-investigation-this-time-names-5-hour-energy/> (last visited July 8, 2013).

<sup>9</sup> *Tyrosine*, UNIVERSITY OF MARYLAND MEDICAL CENTER, available at <http://umm.edu/health/medical/altmed/supplement/tyrosine> (last visited July 9, 2013).

spontaneous abortion. 5-Hour Energy disputes the causal connection between these medical conditions and its products, but the reports have been enough to prompt an investigation by the FDA<sup>10</sup> and by members of Congress.<sup>11</sup>

Again, the State is not asserting an investigative conclusion, but needs the information to make an informed enforcement decision for all three subject areas of the State's deception investigation. The need for this information is even more pronounced considering the possible catastrophic harm to consumers.

### CONCLUSION

As set forth above, 5-hour Energy's Complaint should be dismissed with prejudice.

Respectfully submitted,

**ROBERT E. COOPER, JR.**

Attorney General and Reporter

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<sup>10</sup> Michelle Castillo, *FDA Investigating 13 Deaths Tied to 5-hour Energy*, CBS NEWS, available at [www.cbsnews.com/8301-204\\_162-57550247/fda-investigating-13-deaths-tied-to-5-hour-energy/](http://www.cbsnews.com/8301-204_162-57550247/fda-investigating-13-deaths-tied-to-5-hour-energy/) (last visited July 9, 2013).

<sup>11</sup> Rpt. From Staff of Congressman Ed Markey, Sen. Richard Durbin, and Sen. Richard Blumenthal, *What's All the Buzz About? A Survey of Popular Energy Drinks Finds Inconsistent Labeling, Questionable Ingredients and Targeted Marketing to Adolescents* (April 10, 2013) available at [http://markey.house.gov/sites/markey.house.gov/files/documents/2013-04-10\\_EnergyDrink\\_Report\\_0.pdf](http://markey.house.gov/sites/markey.house.gov/files/documents/2013-04-10_EnergyDrink_Report_0.pdf).

## CERTIFICATE OF SERVICE

I certify that on the 11th day of July, 2013, I served the above-referenced pleading as follows:

***Via Hand-Delivery and E-mail:***

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Counsel for Plaintiffs, Innovation Ventures, LLC, Living Essentials, LLC, and MicroDose Sales, LLC

A handwritten signature in black ink, reading "Brant Hanell". The signature is written in a cursive, flowing style with a large, prominent "B" and "H".